Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

In the Matter of	)	
	)	
Jurisdictional Separations Reform and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Options for Comprehensive Separations Reform	)	
	)	

Reply Comments of Warinner, Gesinger & Associates, LLC Regarding the "Glide Path" Policy Paper Filed by State Members of the Federal Joint Board on Jurisdictional Separations

I. INTRODUCTION

Warinner, Gesinger & Associates, LLC ("WGA") submits these reply comments in response to comments filed by other organizations and interested parties in the above captioned proceeding.

WGA is a certified public accounting firm specializing in the provision of accounting and consulting services to local exchange telecommunications carriers throughout the United States. These services include assisting clients in conducting jurisdictional cost separation studies, aiding in the preparation and issuance of interstate access services tariffs, and advising clients regarding accounting requirements under Parts 32, 36, 64, and 69 of the FCC's Rules and Regulations.

II. SUMMARY

WGA supports the comments filed by those parties that recommend the FCC allow sufficient time to study the impact of each of the proposed options for comprehensive reform of the Commission's Part 36 jurisdictional separations rules.[1]

WGA agrees with the initial comments filed by parties stating that any revision in existing cost allocation procedures may have profound impacts on the state and interstate rates and revenue streams of local exchange carriers ("LECs"). These impacts should be carefully monitored in advance and phased-in over time to deter customer rate shock and to maintain stability in LEC revenue streams. The process of phasing in rules changes has worked well in the past and should be continued, if necessary, in this proceeding. WGA's main concern in this proceeding is the potential for unwarranted revenue impacts from rules changes to rural local exchange carriers ("RLECs") that may affect their ability to raise capital for plant upgrades and expansions or to pay current operating costs and debt service requirements.

WGA encourages the continuance of the dialog started with the Joint Board Glide Path Paper. The Commission should establish a procedure allowing several additional requests for information and comment cycles on the Joint Board Glide Path Paper. The Commission should also encourage industry participation with all Joint Board analysis by creating a Forum in which interested parties could participate in the determination of issues and evaluation of potential allocation methods. WGA believes that it may take several years to quantify the financial outcome of proposed alternatives to the current jurisdictional separations process. Until a complete record of the financial impacts of each of the seven paths are developed, WGA believes that Path 1, a continuation of the Separations Freeze, is the best option for rate-of-return regulated ILEC/RLEC companies not subject to price caps or competition. Path 1 allows for revenue streams to be predictable and provides stability and certainty for local exchange carriers. WGA recommends Path 7 as an option for qualifying local exchange carriers under price cap rules and local exchange carriers subjected to competition within their study areas.

III. KEY ISSUES OBSERVED FROM INITIAL FILED COMMENTS

The FCC Should Establish an Appropriate Time Frame and Objectives for this Proceeding

Several of the parties filing initial comments suggest that the Commission expand the period of time allotted for reviewing the issues presented in the Glide Path paper. The National Exchange Carriers Association, Inc. (NECA), the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telephone Companies (OPASTCO) ("the Associations") do not recommend or choose a particular path, but instead request that the FCC take additional time to "assimilate the effects of recent and already-planned changes in rate-or-return (ROR) carrier rules and regulations."[2] They request "that the Separations Joint board begin now to establish a working relationship

---

[1] See Comments of "the Associations" in response to the Commission's *Public Notice* (FCC DA 01-2973), dated January 22, 2002, at page 3.
[2] See Comments of "the Associations" in response to the Commission's *Public Notice* (FCC DA 01-2973), dated January 22, 2002, at page 3.

with the industry",[3] but "believe that there is ample time available for such collaboration."[4] The United States Telephone Association ("USTA") USTA states that "It would be preferable for the FCC to seek comment on the options presented in the Policy Paper after the passage of at least two years from the effective date of the (separations) freeze."[5] They also state that "the Common Carrier Board (CCB) should leave the record open indefinitely for filing comments on the Policy Paper."[6] GVNW, Consulting, Inc. ("GVNW") states that "the Options outlined (in the Glide Path document) should be treated as nothing more than a means to begin and stimulate debate."[7] John Staurulakis, Inc. ("JSI") suggests that "requests for comment on any future Joint Board recommendation regarding this matter provide for an extended comment cycle, similar to the request for comments regarding the policy papers on the unified intercarrier compensation proposal addressed last year."[8]

Several of the parties are also concerned about the implementation periods that may be adopted by the Commission in affecting any change resulting from this proceeding. USTA "urges the FCC to not act precipitously in forging forward with a comprehensive

---

[3] See Comments of "the Associations" in response to the Commission's *Public Notice* (FCC DA 01-2973), dated January 22, 2002, at page 5.
[4] See Comments of "the Associations" in response to the Commission's *Public Notice*, dated January 22, 2002, at page 5.
[5] See Comments of the United States Telephone Association, USTA "Glide Path" Comments, dated January 22, 2002, at page 4.
[6] See Comments of the United States Telephone Association, USTA "Glide Path" Comments, dated January 22, 2002, at page 5.
[7] See GVNW Consulting, Inc. Glide Path Comments, dated January 22, 2002, at page 1.
[8] See Comments of John Staurulakis, Inc., In the Matter of Glide Path Policy Paper Filed by State Members of the Federal-State Joint Board on Jurisdictional Separations, dated January 22, 2002 at page 4.

review of separations."[9] In its comments, USTA suggests that seven months into the five year freeze is far too early to engage in a constructive (separations reform) effort.

WGA agrees that the time line for review of the proposals outlined in the Glide Path paper needs to be greatly expanded. The Commission has just begun a five-year separations freeze to provide stability and certainty to interstate revenue streams. Implementing changes on top of changes before we have an opportunity to see the impacts of the existing separations freeze, will only cause confusion and mayhem within the industry. WGA agrees with GVNW that the Glide Path Paper should be used for its intended purpose, to stimulate discussion. But it should go beyond that. The industry needs to develop a Forum with the Joint Board, in which the industry can set an agenda for items to be studied and quantified. This cannot be accomplished within the existing time lines established by the Commission. The industry Forum could be established with a goal of reviewing impacts from both the existing separations freeze and proposed changes from the Glide Path options over the next two years.

Revenue Impacts From Proposed Glide Path Options

Any proposed change in existing separations rules will have an impact on the cost allocations and resulting revenue streams of local exchange carriers. These changes must be addressed by the industry in detail before contemplating a path acceptable to each LEC and thus the industry. This review will take time and resources, both of which are scarce for the companies these issues are most likely to effect. In comments by Home

[9] See Comments of the United States Telephone Association, USTA "Glide Path" Comments, dated January 22, 2002, at page 5.

Telephone Company, Inc. ("Home"), they state "Most small LECs possess neither the personnel nor sufficient time to analyze and comment on issues of such complexity as those presented in this and other public notices. The FCC must seek out rural LEC input through regional public hearings or other means in order to ensure that rural LEC concerns are heard and addressed."[10]

A forum established under the auspices of the Joint Board can identify the separations issues that should be addressed by the industry and solicit the necessary information to determine the cost and revenue impacts of small LECs. The concern of Home Telephone of being "able to sustain the revenue flows necessary to provide advanced telecommunication services at reasonable rates to the rural consumer we serve"[11] is a concern shared by all RLECs across the country. Furthermore, using an industry led Forum to update the record would seem to address the Western Alliance position that the Commission not change separations until there is some assurance that local service rates do not exceed affordable levels in significant portions of Rural America.

In the separations freeze order at paragraph 9, the FCC did not adopt the Joint Board recommendation to reduce local dial equipment minutes (DEM) because they did not believe that the record allowed them to quantify with any degree of accuracy the impact of Internet minutes on a nationwide basis. An industry forum would enable the companies to establish a record and identify the information the FCC needs to know to determine the correct options to be explored and how to best incorporate proposed

[10] See Home Telephone Company, Inc. Glide Path Comments, dated January 22, 2002, at page 2.
[11] See Home Telephone Company, Inc. Glide Path Comments, dated January 22, 2002, at page 3.

changes into the separations process. This record is necessary to assure the LECs like Home Telephone Company that they will be able to sustain the revenue flows necessary to provide advanced telecommunications services at reasonable rates to the customers they serve.

One Path May Not Fit All

Most parties request that the Commission adopt Path 1 to extend the Freeze in order to provide a period of revenue certainty and stability to the industry. Several parties have commented on the need to eliminate cost separations for carriers under price cap regulation. Other carriers have indicated that companies subject to competition should not be cost or price regulated in any way.

Fred Williamson and Associates, Inc. ("FW&A") states that "the rates for price cap LECs, both federal and state are no longer dependent on jurisdictional cost levels. Additionally, price cap LECs often receive federal and state universal service funding based on forward looking costs. As a consequence, the revenue streams of these LECs are for the most part no longer dependent on jurisdictionally separated costs."[12] Alaska Communications Systems, Inc. ("ACS") "urges the Commission to continue to seek every opportunity to move toward a world without jurisdictional separations. At a minimum, the Commission should confirm that rate regulation, including jurisdictional

[12] See Fred Williamson & Associates, Inc. Glide Path Comments, dated January 22, 2002, at page 5.

separations requirements, will automatically and immediately sunset for carriers facing effective competition."[13]

We support the argument that carriers subject to competition or carriers under price caps should not be bound by the same rules that might apply to rate-of-return regulated telephone companies. Verizon reminded the FCC that "Another goal of the freeze was to simplify the separations process in order to reduce regulatory burdens on carriers during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace."…"Having successfully removed these regulatory costs, it makes no sense to replace them with costs associated with another complicated regulatory scheme that will not create commensurate benefits.[14] Carriers, under certain circumstances, should be allowed to migrate to Path 7 who meet the criteria outlined on page 6 of the comments of FW&A. Regulated companies not subject to price caps or competition should stay on Path 1 until the record can support a change in current separations procedures.

Regulatory Stability and Certainty

Any change adopted by the Commission as a result of the Glide Path proposals should at a minimum reduce the regulated cost of business for LECs while maintaining certainty and stability in LEC revenue streams. The Western Alliance states that "At the time it adopted the RTF Order in May of 2001, the Commission repeatedly emphasized that it would provide predictablilty, certainty and stability to rural telephone companies for five

[13] See Comments of Alaska Communications Systems, Inc., In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, dated January 22, 2002, at page 2.

years, so that they can continue to provide supported telecommunications services at affordable rates to American consumers."[15] Any proposed change in separations procedures brought about by the Glide Path paper should emphasize the same objectives stipulated in the RTF Order to provide certainty and stability of revenue streams to rural telephone companies.

Verizon identifies the correlation between the separations freeze and LEC revenue streams best when it stated that "If, after only a little more than six months of stability, the Commission chooses a path that would establish an overhauled separations system, or one that would create an entirely new, untested regulatory regime, carriers would again be put in a state of uncertainty that undoubtedly would inhibit future investment."[16] Local exchange carriers need to resume some level of revenue stability and certainty upon implementation of the separations freeze during 2001. No change in separations procedures should be adopted by the Commission until a record is established indicating whether the proposed change maintains revenue stability and certainty. Until then, rate-of-return regulated carriers should stay on Path 1 for separations purposes.

---

[14] See Comments of Verizon on Joint Board "Glide Path" Paper, dated January 22, 2002, at page 3.
[15] See Comments of the Western Alliance, In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, dated January 22, 2002, at page 8.
[16] See Comments of Verizon on Joint Board "Glide Path" Paper, dated January 22, 2002, at page 3.

<u>Other Comments Referenced by WGA in Support of Deferring Further Comprehensive Separations Reform Until the Current Freeze Is Completed</u>

There were numerous issues presented in initial comments that support WGA's position that further changes in separations procedures be deferred until an industry Forum can be established to address the issues.

1. Western Alliance concludes that "the Commission should declare that it will not undertake the elimination or radical restructuring of separations, as proposed in the Glide Path Paper, unless and until it receives a clear signal from Congress that the existing separations system needs to be changed, and unless and until it develops significant evidence that such changes will not discourage infrastructure investment nor cause local service rates to exceed affordable levels in significant portions of Rural America."[17]

2. GVNW concludes "the Commission utilize the Glide Path document as intended, simply to stimulate debate. However, primary efforts should be directed at how to improve the jurisdictional separations process, not eliminate it."[18]

3. Most of the consulting firms that represent the Rural Local Exchange Carriers (RLECs) recommend the Commission adopt Path 1, to extend the factor freeze, as the Glide Path choice.

[17] See Comments of the Western Alliance, In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, dated January 22, 2002, at page 10.

- TCA concludes the "contemplating comprehensive separations reform in the guise of a Glide Path at this time is not advisable considering RLEC universal service and intercarrier compensation reform have not been completely implemented."[19]

- "FW&A believes that it is critical that rate of return ILECs adopt an extended freeze (Option 1), until they also are no longer dependent on jurisdictionally separated costs in either jurisdiction to establish rates and earnings levels of universal service funding levels." They go on to say that Price cap LECs, however, should be given the opportunity to transition to Option 7. In their conclusion, "FW&A believes that Option 1 (a continuation of the freeze) is the only option that satisfies the goals articulated by the Commission and the Joint Board and the additional, but critical, goals recommended by FW&A…"[20]

4. Even Sprint states that of the options proposed, only Option One is acceptable to Sprint. Sprint believes the wisest approach to separations at the moment is to extend the freeze and re-evaluate the situation when the industry has stabilized, competition has developed, and reform can be comprehensive.

5. The State of California Public Utilities Commission said it would be a more constructive use of time in this docket to focus on developing the details of new,

---

[18] See GVNW Consulting, Inc. Glide Path Comments, dated January 22, 2002, at page 5.
[19] See Comments of TCA, Inc. – Telcom Consulting Associates Regarding Options for Comprehensive Separations Reform, dated January 22, 2002, at page 5.
[20] See Fred Williamson & Associates, Inc. Glide Path Comments, dated January 22, 2002, at page 8.

flexible and simpler separations mechanisms consistent with the criteria outlined in the NRPM. As a result, they conclude that Options 4 and 5 ore the only viable revisions to the separations process. WGA agrees that existing separations should encompass changes for the allocation of Packet Switching and that the change might incorporate a simple change in the category assigned to this technology. However, the issue must be reviewed further. WGA cannot agree that Path 5 would provide simplification of the rules or stability in the revenue streams of LECs.

6. Verizon believes the current freeze should remain in place until the commission is ready to phase out separations. They also say that separations should not be applied to new broadband investments. They state, "There is no need to regulate broadband investment under Title II at all, because it is occurring in a competitive marketplace in which the ILECs are new entrants."[21] Interestingly, they also state that adjustments to the DEM factor in particular are not advisable. They reference ¶ 40 of the Order where it states "no reliable data"…upon which to set any reasonable local DEM reduction on an across the board nationwide basis…" "That is because there is simply no way to determine what impact the Internet has on DEM." Like other carriers, Verizon does not identify its dial-up Internet-bound traffic apart from its dial-up voice minutes." WGA believes Internet traffic can be identified and would be identified if were treated as other than local traffic for jurisdictional separations. Internet traffic is an issue identified by WGA that should be revisited by the Joint-Board and Forum.

[21] See Comments of Verizon on Joint Board "Glide Path" Paper, dated January 22, 2002, at page 5.

7. SBC "finds it difficult to envision that there will be any need to maintain the jurisdictional separations regime a full decade after the telecommunications markets were opened up to competition by the Telecommunications Act of 1996." SBC concludes "The ultimate goal of the Commission and the Separations Joint Board should be to eliminate the jurisdictional separations process." WGA can only agree to the position of SBC as it relates to carriers in a competitive marketplace or qualifying carriers subject to price cap regulation.

IV. POTENTIAL SEPARATIONS ISSUES FOR DISCUSSION BY THE FORUM

In addition to the issues previously discussed several other issues, and their impact on ILEC/RLEC revenues, should be studied. WGA recommends the joint Board begin their analysis as soon as possible, since it may take several years to consider all the options, which cause jurisdictional shifts impacting affordable rates. WGA recommends the following separations issues for further review and discussion within Path 1:

- Terminating usage compensation – getting paid for all calls terminating to the local network, especially from the wireless industry.
- The "proper" matching of Internet dial-up services to the jurisdiction with regulatory control.[22] Does it make sense that dial-up is treated as local, but broadband is recovered through interstate special access rates? Will the FCC ever lift the ban on charging ISPs access? If not, how does this effect the jurisdictional treatment of Internet?

---

[22] See Comments of Alaska Communications Systems, Inc., In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, dated January 22, 2002, at pages 5 and 10.

- How much Internet dial-up traffic is in local usage? What is the shift that is occurring, or will occur, as LECs deploy broadband services and customers move off of dial-up access?
- Weighting terminations in order to allow for the assignment of separated costs based on similar relationships maintained in rates (DS-0, DS-1 and DS-3 terminations).
- Identifying mixed voice and packet switch service locations, then studying the options for separating the costs on either a usage or a flat rate basis, or a combined basis. In their discussion, "TCA believes there is merit in the Paper Option #4, which discusses the redesign of separations to account for packets and competition."[23] They say "The *project* contemplated by the paper should encompass finding a method to differentiate between circuit and packet equipment, and finding a process to jurisdictionally separate both types of investment based on usage factors."[24]
- Eliminating the need for business office studies used in the allocation of services expense, since the majority of Category 1 service expense costs are allocated to the Billing & Collection element in Part 69.

Respectfully submitted,

Warinner, Gesinger & Associates, LLC

[Filed Electronically]

By: William J. Warinner
Managing Principal
Warinner, Gesinger & Associates, LLC
10901 West 84th Terr., Suite 101
Lenexa, Kansas 66214

March 8,2002

[23] See Comments of TCA, Inc. – Telcom Consulting Associates Regarding Options for Comprehensive Separations Reform, dated January 22, 2002, at page 4.
[24] See Comments of TCA, Inc. – Telcom Consulting Associates Regarding Options for Comprehensive Separations Reform, dated January 22, 2002, at page 4.